



Sentencing for Sexual Penetration Offences: A Statistical Report

Sentencing Advisory Council
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Contents

Contributors	v
Acknowledgements	v
Introduction	1
Background	3
Attrition of sexual offences	3
Offences	4
Methodology	7
Data	7
Measure of offence	7
Offence counting rules: charges and cases	7
Measures of sentencing	8
Sentencing factors	8
Sentencing overview	11
Sentence type	12
Sentencing of child sexual offence charges	17
Age of victim	17
Defendant age at offence	20
Age difference between defendant and victim	23
Gender of defendant	26
Prior sexual offending	27
Plea type	30
Sentencing of child sexual offence cases	33
Number of sexual offences per case	33
Summary	37
References	39

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Introduction

The aim of this statistical report is to provide a comprehensive picture of recent sentencing practices for the following offence categories:

- sexual penetration with a child aged under 10;
- sexual penetration with a child aged between 10 and 16 and under the care, supervision or authority of the offender;
- sexual penetration with a child aged between 10 and 16;
- rape; and
- incest.

The report analyses both recent sentencing practices in Victoria and the relationship between various offence, offender and victim characteristics and sentencing outcomes. Such characteristics include the age of the victim, the age of the defendant and the age difference between them.

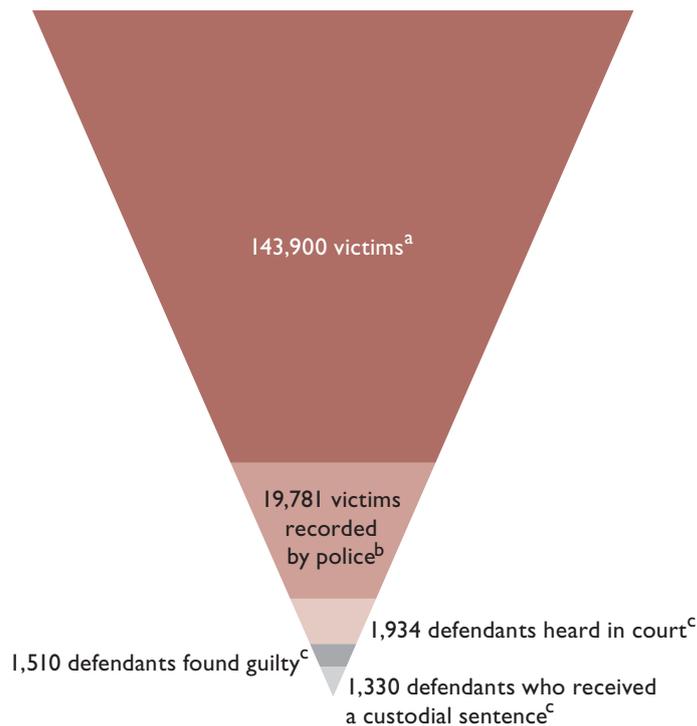
The report firstly outlines the offence categories under investigation. It then discusses the data and methodology employed for examining sentencing practices. The next section provides a statistical overview of recent sentencing practices, followed by an examination of sentence variation at the charge level according to a number of factors. The final section examines sentence variation at the case level according to the number of sexual offences sentenced within a case.

Background

Attrition of sexual offences

Sexual offences that result in a sentence being imposed by a court represent a very small percentage of sexual offences that are reported by victims in surveys. Figure 1 shows the decrease in the numbers of sexual offences in general at different stages of the criminal justice systems throughout Australia. A discussion of attrition of sexual offences within the criminal justice system in Victoria can be found in Victorian Law Reform Commission (2001).

Figure 1: Representation of the number of victims of sexual assault and related offences and defendants in sexual assault and related offences cases at different stages of the criminal justice systems throughout Australia



a Australian Bureau of Statistics (2005)

b Australian Bureau of Statistics (2007a)

c Australian Bureau of Statistics (2007b)

'Defendants heard in court' refers to the ABS category of 'adjudicated defendants'.

'Defendants found guilty' refers to the ABS category of 'defendants proven guilty'.

Offences

Sexual penetration with a child aged under 16

The focus of this report is the offence under section 45 of the *Crimes Act 1958* (Vic) of taking part in an act of sexual penetration with a child under the age of 16.

The *Crimes Act 1958* (Vic) defines sexual penetration as:

- (a) the introduction (to any extent) by a person of his penis into the vagina, anus or mouth of another person, whether or not there is emission of semen; or
- (b) the introduction (to any extent) by a person of an object or a part of his or her body (other than the penis) into the vagina or anus of another person, other than in the course of a procedure carried out in good faith for medical or hygienic purposes.¹

Under section 45, taking part in an act of sexual penetration with a child under the age of 16 carries different maximum penalties depending on the age of the child and the nature of the relationship between the offender and victim (see Table 1).

Table 1: Maximum penalties for sexual penetration with a child

Age of victim/relationship	Maximum penalty
Child is under 10	25 years' imprisonment
Child is aged between 10 and 16	10 years' imprisonment
Child is aged between 10 and 16 and is under the care, supervision or authority of the offender	15 years' imprisonment

Consent to sexual penetration is irrelevant where the child is under 10. Where aged between 10 and 16 there are limited circumstances in which consent is a defence, including:

- (a) the accused believed on reasonable grounds that the child was aged 16 or older; or
- (b) the accused was not more than 2 years older than the child; or
- (c) the accused believed on reasonable grounds that he or she was married to the child.²

¹ *Crimes Act 1958* (Vic) s 35.

² *Crimes Act 1958* (Vic) s 45.

Rape and incest

In order to provide a context to the examination of sexual offences against children, this report also considers the offences of rape and incest. The maximum penalty for rape is 25 years' imprisonment. The key distinction between it and sexual penetration with a child aged under 16 is the issue of consent. Lack of consent is an element of rape which must be proven by the prosecution.

The offence of incest is defined in section 44 of the *Crimes Act 1958* (Vic). The primary form of incest carries a maximum penalty of 25 years' imprisonment and is an act of sexual penetration with a person whom the offender knows to be his or her:

- child or other lineal descendant or his or her step-child; or
- child or other lineal descendant or step-child of his or her de facto spouse (provided the victim is under the age of 18).

Sexual penetration between siblings and sexual penetration of a parent by a child are also incest offences, which both carry a maximum penalty of 5 years' imprisonment. Thus, incest can be distinguished from sexual penetration with a child aged under 16 primarily by the type of relationship between the victim and offender.

Methodology

Data

The vast majority of serious sexual offence cases are heard in the County Court, while a small number are heard in the Supreme Court. This report therefore used the higher courts' sentencing database and sentencing remarks as the sources of case information and focussed on those sentenced between July 2006 and June 2008.

Measure of offence

The measure of offence was the offence listed against a charge in the higher courts' database. An issue however was found whereby the offence of sexual penetration with a child aged under 16 was not always correctly disaggregated into one of its three component offence categories. In order to overcome this, transcripts of judges' sentencing remarks were accessed from the Victorian Government Reporting Service, with the assistance of judges and their associates in some instances. The specific category of sexual penetration offence was determined based on the offence stated by the sentencing judge. The sentencing remarks for 24 charges (10 cases) were unable to be accessed. These charges represented 3.5 per cent of all charges of sexual penetration with a child aged under 16 in the reference period and were excluded from the analysis.

Offence counting rules: charges and cases

In this report, a crucial distinction is made between *charges* and *cases*. The presentment in a case can include multiple 'counts' (meaning formal allegations). In this report, a 'charge' is a single count of a proven offence while a 'case' is all proven charges against a defendant in the same proceeding.

The charge-based counting rule used in this report is simple: *count one for each proven charge of a given offence category*. The case-based counting rule is more complex: *count one for each case that contains at least one of a specified offence category*. Thus, if a case contains multiple counts of the same offence category, that offence is counted once within that offence category. A case with multiple offence categories is counted under each of those offence categories. A case that contains a sexual penetration with a child aged 10 to under 16 and a sexual penetration with a child aged under 10 is counted as a case under each of these offence categories.

Measures of sentencing

The measures used for sentencing were the type and length of sentence at the charge and case level. At the case level, the sentence used was the total effective sentence, which is the total sentence a defendant receives, taking into account sentences for all charges. At the charge level, the sentence used was that attached to the charge.

Under the *Sentencing Act 1991*, judges have a range of sentence types available to them. These include but are not limited to: imprisonment, partially and wholly suspended sentences of imprisonment, intensive correction order, community-based order, fine and adjourned undertaking.

Because of the serious nature of the sexual offending under investigation, the sentence type analysis focussed mainly on the percentage of charges/cases that received imprisonment while the sentence length analysis focused on the average and maximum imprisonment terms imposed.

This study only considered the initial sentence imposed by a judge. The data must be used with caution, as some of the sentences may have subsequently been decreased, increased or set aside completely on appeal.

Sentencing factors

The examination of sentencing factors was restricted to the three offence categories under sexual penetration with a child aged under 16. Factors examined were those either consistently and reliably mentioned in sentencing remarks or recorded in the higher courts' database. They included the following.

Age of victim at offence

Information about the age of the victim was consistently referred to in sentencing remarks, which were therefore the source of this information. This was a charge specific variable, as often charges within a case were committed at different times and against different victims, with varying ages.

Age of defendant at offence

Information about the age of the defendant at the time of the offence was obtained from sentencing remarks. The defendant's age at the time of the offence was not always stated; generally, however, a date of offence was stated, which allowed the defendant's age at the time of the offence to be calculated using the date of birth of the defendant supplied in the higher courts' sentencing database.

Age discrepancy

Age discrepancy was calculated by subtracting the victim's age at the time of the offence from the defendant's age at the time of the offence.

Prior sexual offences

This refers to whether the judge mentioned prior sexual offence convictions relating to the defendant in his or her sentencing remarks. This was considered a reliable indicator of prior sexual offence convictions, as reference to the presence (and type) or absence of prior offending was consistently made in remarks.

Plea type

Plea type is information consistently referred to in sentencing remarks, which were the source for these data. This was a dichotomous variable relating to a charge with values of guilty or not guilty.

Other offences in case

The number and type of other offences sentenced in a case were obtained from the higher courts' sentencing database. This information relates to a case, rather than specific charges.

The 'other offences' were categorised into the same sexual offence, all sexual offences and all offences. Sexual offences included any offence that falls within Division 8 of the *Crimes Act 1958* (Vic).

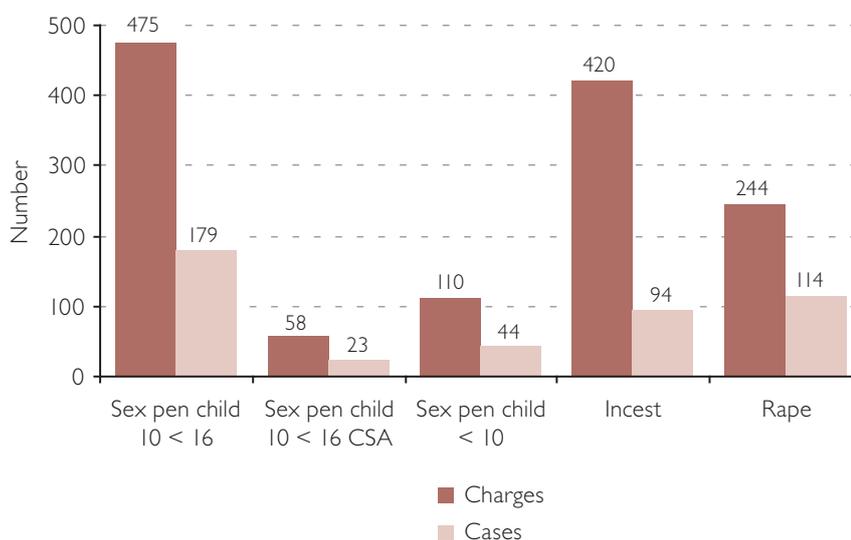
There are likely to be other factors at play other than simply those examined in this report. It was not possible to examine any more factors due to limited data availability.

Sentencing overview

This section examines the volume of selected sexual offences sentenced in Victoria's County and Supreme courts from July 2006 to June 2008, as well as the types of sentences they received. Data are presented at both the charge and case levels. Note that in the graphs some offence names have been abbreviated.³

Figure 2 shows the number of charges and cases sentenced for the five sexual offence categories under consideration.

Figure 2: Number of charges and cases by offence category, 2006–07 to 2007–08



Over the two-year period, sexual penetration with a child aged 10 to under 16 was the most common of these sexual offence categories to be sentenced, with 475 charges in 179 cases, followed by incest (420 charges in 94 cases) and rape (244 charges in 114 cases). Sexual penetration with a child aged 10 to under 16 under the care, authority or supervision of the offender was the least common (58 charges in 23 cases), while there were 110 charges of sexual penetration with a child aged under 10 sentenced in 44 cases.

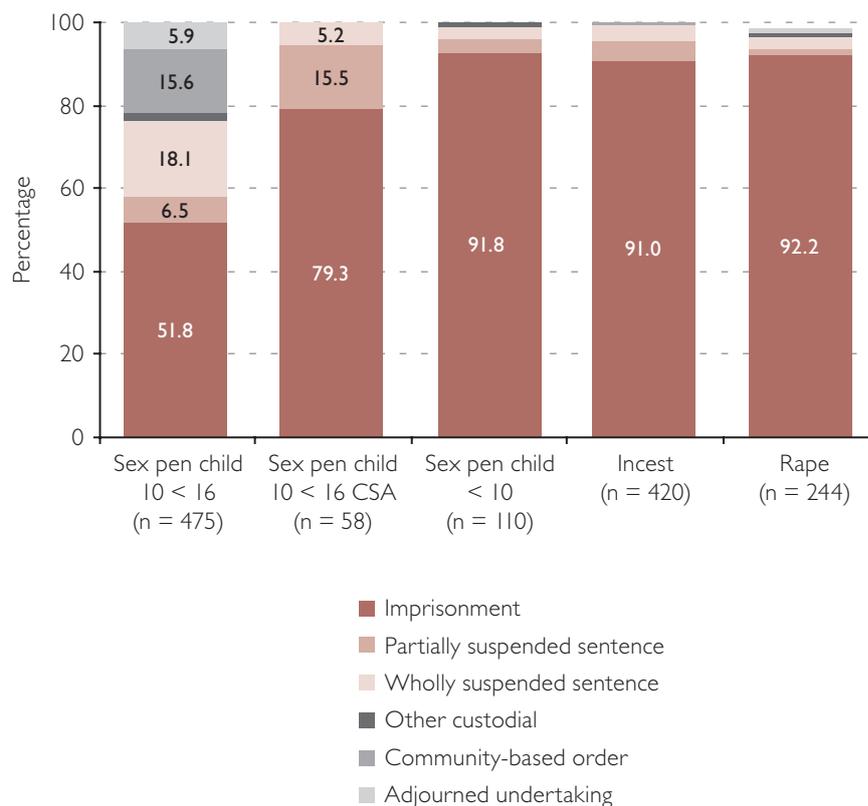
³ The following abbreviations to offence names have been made in the graphs in this report:

- 'Sex pen child 10 < 16' refers to sexual penetration with a child aged 10 to under 16;
- 'Sex pen child 10 < 16 CSA' refers to sexual penetration with a child aged 10 to under 16 who is under the care, authority or supervision of the offender; and
- 'Sex pen child < 10' refers to sexual penetration with a child aged under 10.

Sentence type

Figure 3 shows the sentencing breakdown for charges of the different sexual offence categories.

Figure 3: Percentage of charges by offence category and sentence type, 2006–07 to 2007–08

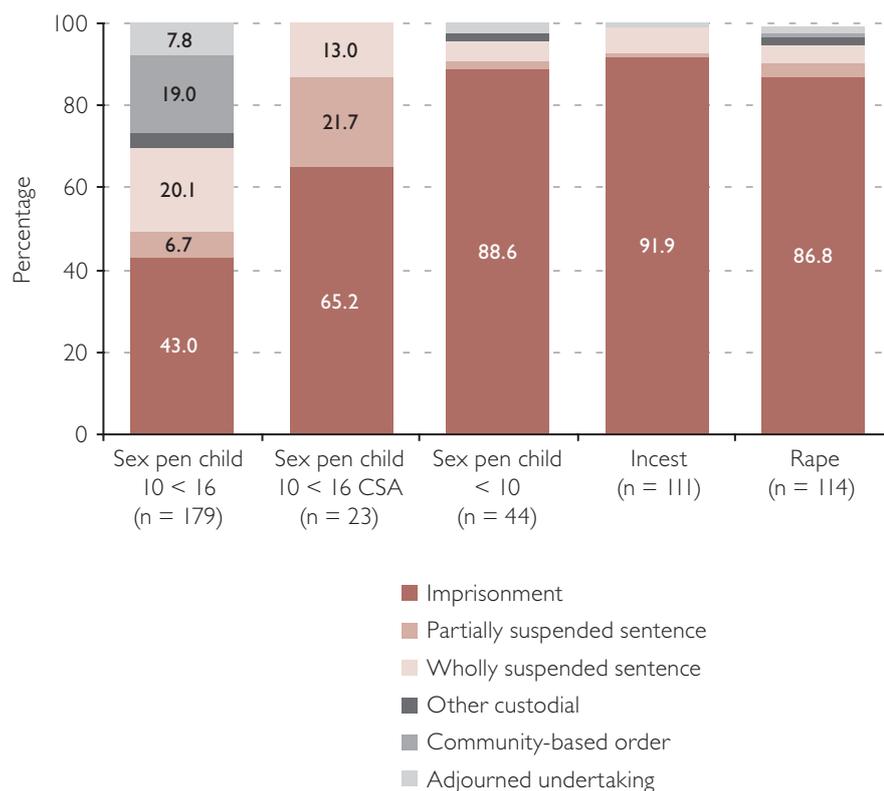


Imprisonment was the most common sentence for each of the offences. A sentence of imprisonment was imposed on over 90 per cent of charges of rape (92.2%), sexual penetration with a child aged under 10 (91.8%) and incest (91.0%). Also, while 79.3 per cent of charges of sexual penetration with a child aged 10 to under 16 who is under the care, supervision or authority of the offender received imprisonment, an additional 15.5 per cent received a partially suspended sentence.

Sentencing for sexual penetration with a child aged 10 to under 16 differed markedly from the other sexual offences. Notably, a much lower proportion of charges received imprisonment (51.8%) and it had the highest proportions of wholly suspended sentences (18.1%), community-based orders (15.6%) and adjourned undertakings (5.9%).

Figure 4 shows the distribution of total effective sentences for cases in which at least one of the specified sexual offence categories was sentenced.

Figure 4: Percentage of cases by offence category and total effective sentence type, 2006–07 to 2007–08

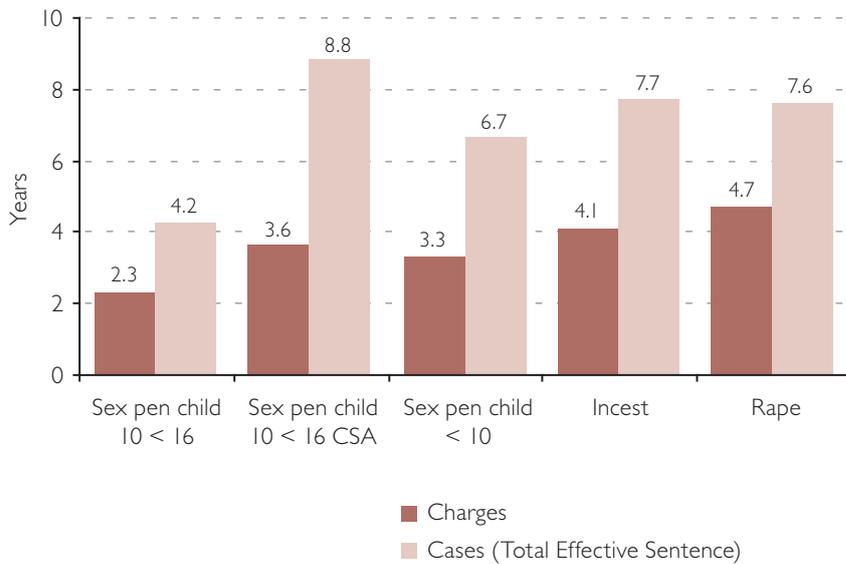


Similar sentence distributions were evident to the charge-based analysis; however in general the severity of sentences was slightly less in the case-based analysis. For example, 43.0 per cent of cases with sexual penetration with a child aged 10 to under 16 received a total effective sentence of imprisonment (compared with 51.8% of charges) and 86.8 per cent of rape cases received imprisonment as opposed to 92.2 per cent of rape charges.

Imprisonment term

Figure 5 shows the average imprisonment terms for charges and cases according to the offence category (for cases the total effective sentence length is used).

Figure 5: Average imprisonment term (years) for charges and cases by offence category, 2006–07 to 2007–08



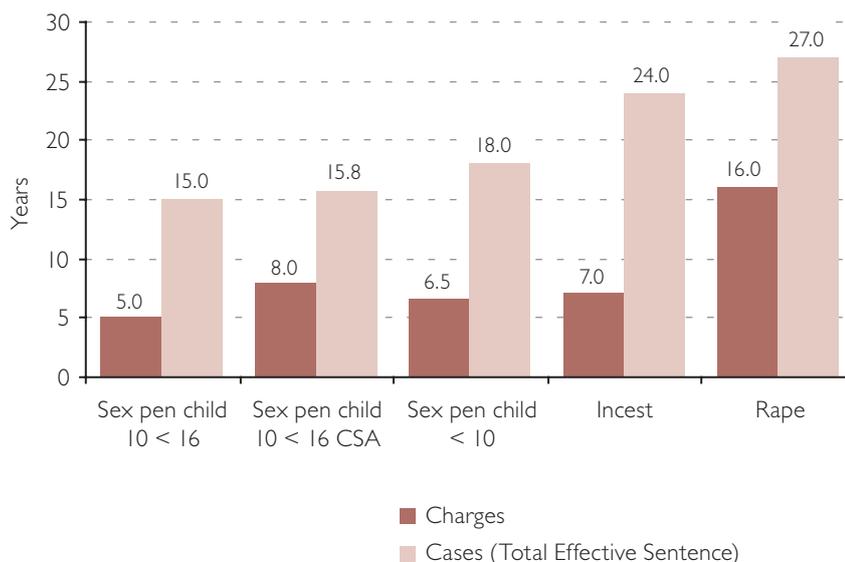
For charges, the longest average imprisonment term imposed was for rape (4.7 years) and the shortest was for sexual penetration with a child aged 10 to under 16 (2.3 years). The average term for charges of sexual penetration with a child aged 10 to 16 and under care, supervision or authority (3.6 years) was marginally higher than for sexual penetration with a child aged under 10 (3.3 years).

For cases, the average total effective imprisonment term across all offences was substantially higher than the average for individual charges. This is due to the number of cases with multiple charges for these offence categories, as shown in the final section of this report.

The rank of these offences, based on sentence length, changed when the total effective sentence was considered, as opposed to the charge. The longest average total effective imprisonment term was for cases that included sexual penetration with a child aged 10 to under 16 who is under care, supervision or authority (8.8 years), followed by incest (7.7 years) and rape (7.6 years). Sexual penetration with a child aged under 10 had an average of 6.7 years while sexual penetration with a child aged 10 to under 16 had the lowest average total effective imprisonment term at 4.2 years.

Figure 6 shows the longest terms of imprisonment imposed for charges and cases by offence category.

Figure 6: Longest terms of imprisonment (years) imposed for charges and cases by offence category, 2006–07 to 2007–08



Of these offence categories, rape had the single longest term of imprisonment imposed at both the charge level (16.0 years) and the case level (27.0 years). The rape case that had a total effective sentence of 27 years' imprisonment included a charge of murder, which received a longer sentence than the rape charge. By contrast, the longest terms of imprisonment for sexual penetration with a child aged 10 to under 16 (5.0 years for charges and 15.0 years for cases) were shorter than for any of the other offence categories. The longest imprisonment term imposed for a case with sexual penetration with a child aged under 10 was 18.0 years, while for a charge it was 6.5 years.

Sentencing of child sexual offence charges

This section focuses on the three offence categories under sexual penetration with a child aged under 16 and examines variation in sentencing according to a number of factors relating to the charge.

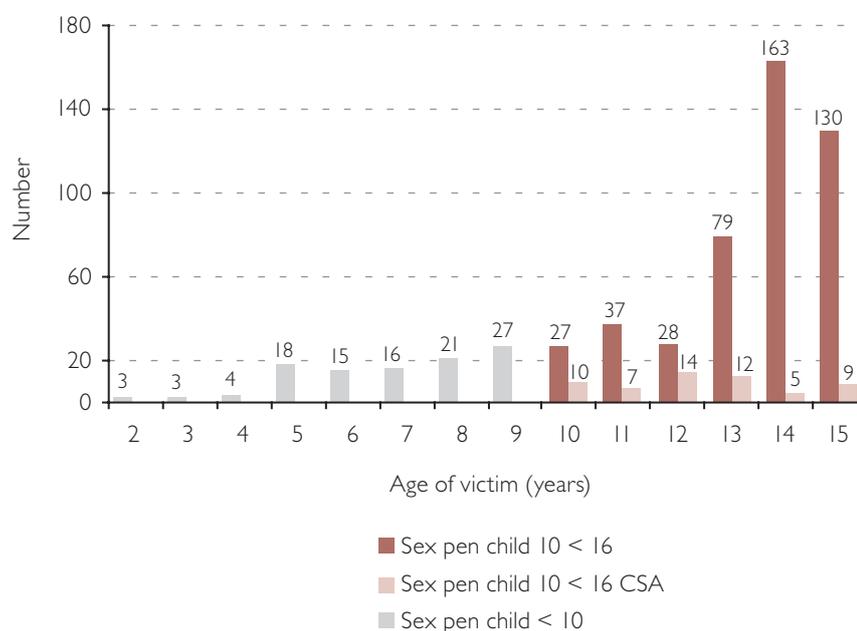
Age of victim

There was considerable variation in the age of the victim for these sexual penetration offences against children, and sentencing outcomes varied according to this factor.

Distribution

Figure 7 shows the number of charges of the three sexual offence categories according to the age of the victim.

Figure 7: Number of child sexual penetration charges by victim age and offence category, 2006–07 to 2007–08



For sexual penetration with a child aged under 10, victims were aged seven to nine in over half of charges (57.7%); however the youngest victim was two years old (in 3 charges).

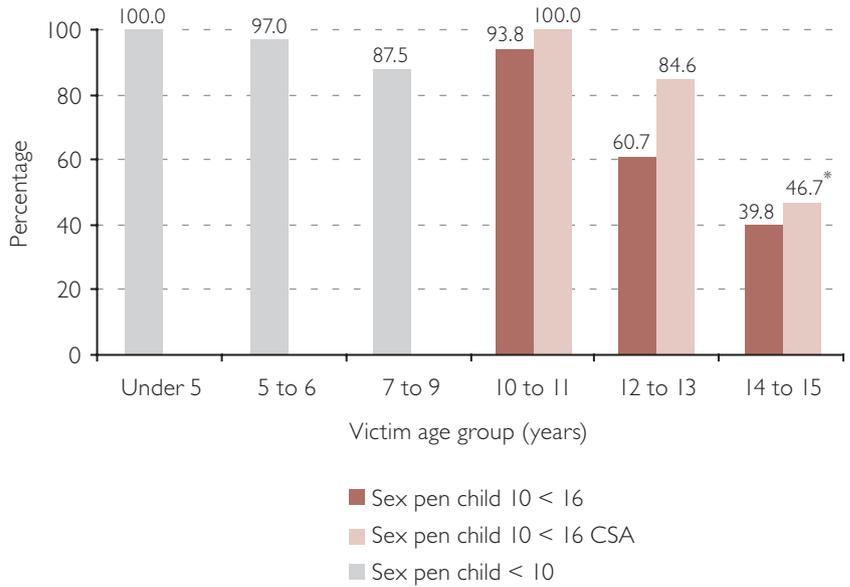
For charges of sexual penetration with a child aged 10 to under 16, the most common victim age was 14 (34.2% of charges) while the majority (61.4%) were aged 14 or 15.

Within the age band of the offence, there was a fairly even distribution of victim ages for charges of sexual penetration with a child aged 10 to under 16 under care, supervision or authority.

Imprisonment sentences

Figure 8 shows the percentage of charges that received imprisonment according to the victim's age group.

Figure 8: Percentage of sexual penetration charges that received imprisonment by victim age group and offence category, 2006–07 to 2007–08



*Fewer than 10 charges

For each offence category, the percentage of charges that received imprisonment declined as the victim age group increased. For sexual penetration with a child aged 10 to under 16, 93.8 per cent of charges where the victim was aged 10 or 11 received imprisonment compared with 39.8 per cent where the victim was aged 14 or 15.

The percentage of charges that received imprisonment where the victim was aged 7 to 9 (87.5%) was marginally lower than the percentage that received imprisonment where the victim was aged 10 or 11 (93.8%).

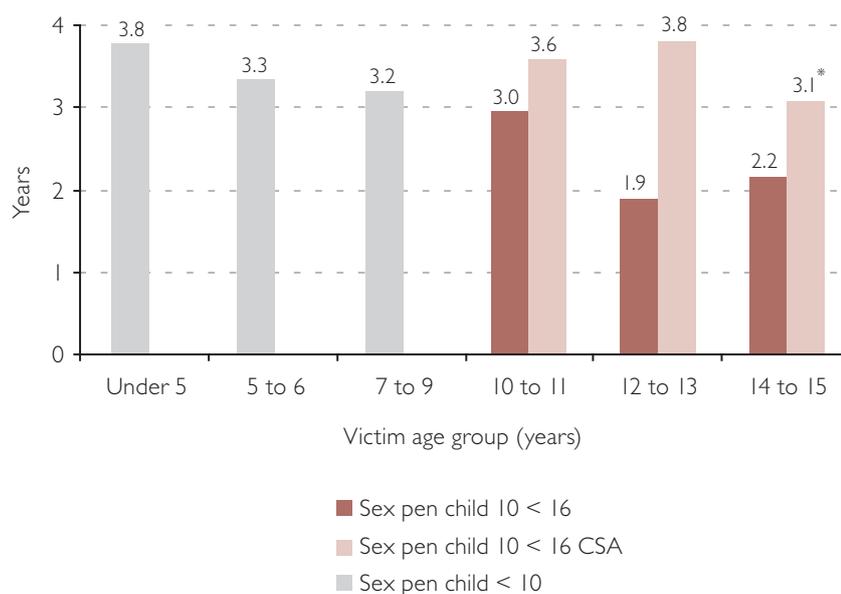
For sexual penetration with a child aged 10 to under 16 who is under the care, supervision or authority of the offender, the percentage of charges that received imprisonment at each victim age group was higher than that for sexual penetration with a child aged 10 to under 16.

The lowest rate of imprisonment was for charges involving victims aged 14 to 15 in charges of sexual penetration with a child aged 10 to under 16.

Imprisonment terms

Figure 9 shows the average imprisonment term for charges according to the age group of the victim.

Figure 9: Average imprisonment term (years) for sexual penetration charges that received imprisonment by offence category and victim age group, 2006–07 to 2007–08



*Fewer than 10 charges

Excluding offences involving a child under the care, supervision or authority of the offender, the average length of imprisonment declined as the age of victims increased. The average imprisonment term was 3.8 years where the victim was aged under 5 and decreased across each victim age group to 1.9 years where the victim was aged 12 or 13. It then rose slightly to 2.2 years for offences where the victim was aged 14 or 15. There was only a minor difference between imprisonment terms where the victim was 7 to 9 years (3.2 years) and 10 to 11 years (3.0 years).

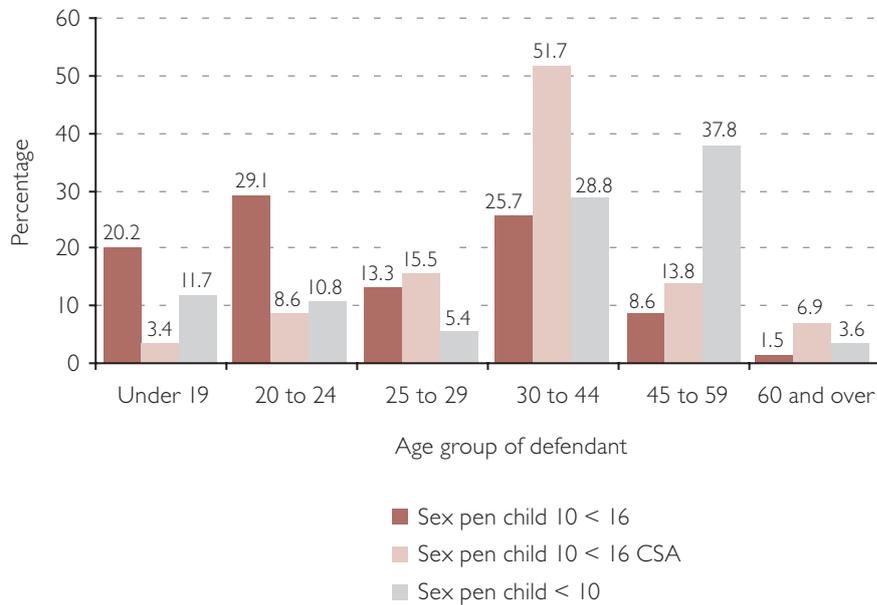
Defendant age at offence

This section examines the age of the defendant at the time the offence was committed.

Distribution

Figure 10 shows the distribution of charges according to the defendant's age at the time the offence occurred.

Figure 10: Percentage of charges by defendant age group at time of offence and offence category, 2006–07 to 2007–08



For charges of sexual penetration with a child aged 10 to under 16, nearly half of defendants at the time of the offence were aged under 24 (49.3%), and over a quarter were aged between 30 and 44 (25.7%).

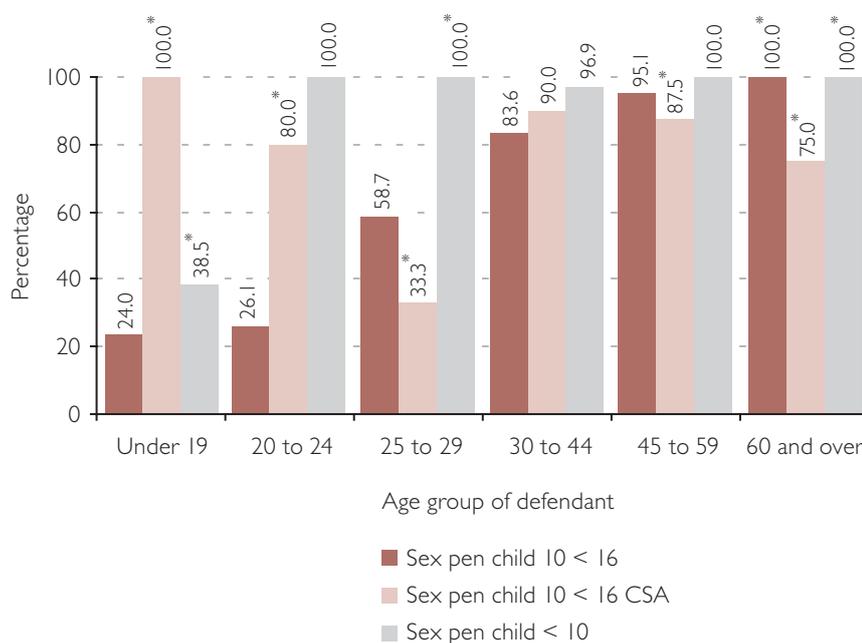
By contrast, for charges of sexual penetration with a child aged under 10, defendants were most commonly aged 45 to 59 years (37.8%), followed by 30 to 44 years (28.8%).

The age distribution of defendants in charges of sexual penetration with a child aged 10 to under 16 under the care, supervision or authority of the offender differed again, with defendants' ages clustering around 30 to 44 years at the time of offending (51.7%).

Imprisonment sentences

Figure 11 shows the percentage of charges that received imprisonment according to the age of the defendant at the time of the offence.

Figure 11: Percentage of sexual penetration with a child aged under 16 charges that received imprisonment by offence category and age of defendant at time of offence, 2006–07 to 2007–08



*Fewer than 10 charges

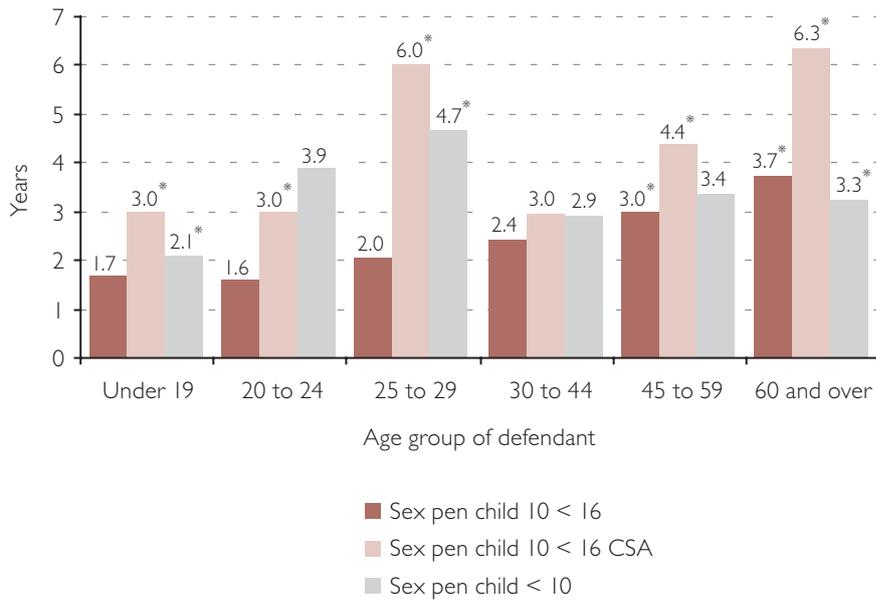
The only offence for which there was a clear pattern with the age of the defendant in the percentage of charges to receive imprisonment was sexual penetration with a child aged 10 to under 16. This percentage increased with the age of the defendant from 24.5 per cent where the defendant was under 19 to 100.0 per cent where the defendant was aged 60 years and over.

The age of the defendant at the time of the offence appeared to have little influence over the percentage of charges that received imprisonment for sexual penetration with a child aged under 10 and sexual penetration with a child aged 10 to under 16 who is under the care, supervision or authority of the offender.

Imprisonment term

Figure 12 shows the average imprisonment term according to the defendant's age at the time of the offence.

Figure 12: Average imprisonment term (years) for sexual penetration with a child aged under 16 charges by age group of defendant at time of offence, 2006–07 to 2007–08



*Fewer than 10 charges

The average imprisonment term for sexual penetration with a child aged 10 to under 16 increased across each defendant age group, from 1.7 years for defendants aged under 19 to 3.7 years for those aged 60 years and over.

The same trend was not found for the other offence categories. For sexual penetration with a child aged under 10, the defendant age group that received the longest average imprisonment term was 25 to 29 years (4.7 years).

For sexual penetration with a child aged under 16 and under the care, supervision or authority of the offender, the 60 and over age group received the longest average term of imprisonment (6.3 years), followed closely by the 25 to 29 year group (6.0 years).

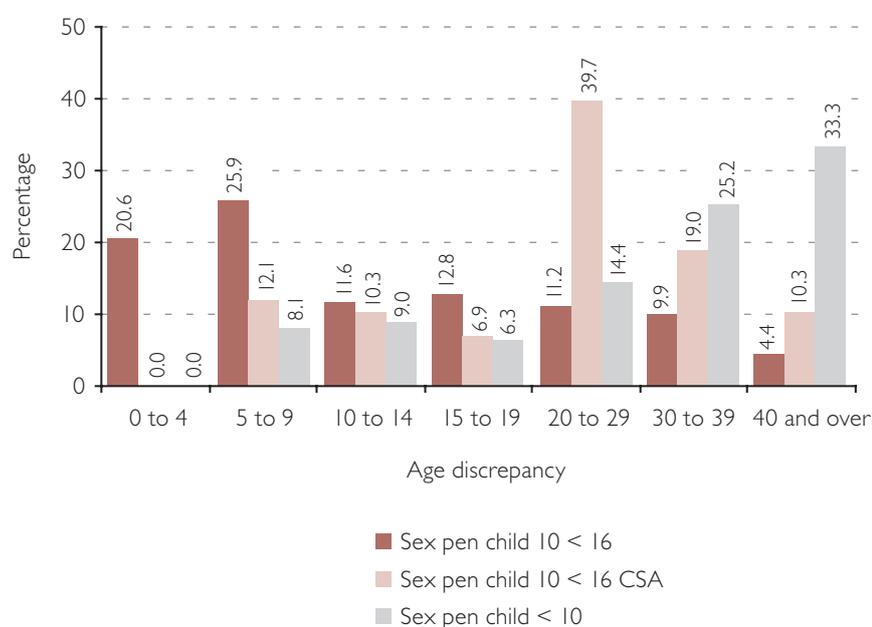
Age difference between defendant and victim

While the previous sections considered the age of the victim and defendant separately, this section considers sentencing in terms of the age *difference* between the victim and the defendant.

Distribution

Figure 13 shows the distribution of age discrepancies for charges of different offence categories.

Figure 13: Percentage of charges of sexual penetration with a child aged between 10 and under 16 by age difference between defendant and victim, 2006–07 to 2007–08



For charges of sexual penetration with a child aged 10 to under 16, nearly half of defendants (46.5%) were less than 10 years older than their victims and nearly one quarter (25.5%) were 20 years or more older than their victims.

In contrast, for charges of sexual penetration with a child aged under 10, over two-thirds (69.0%) of defendants were 20 years or more older than their victims and nearly one-third (33.3%) were 40 years or more older than their victims.

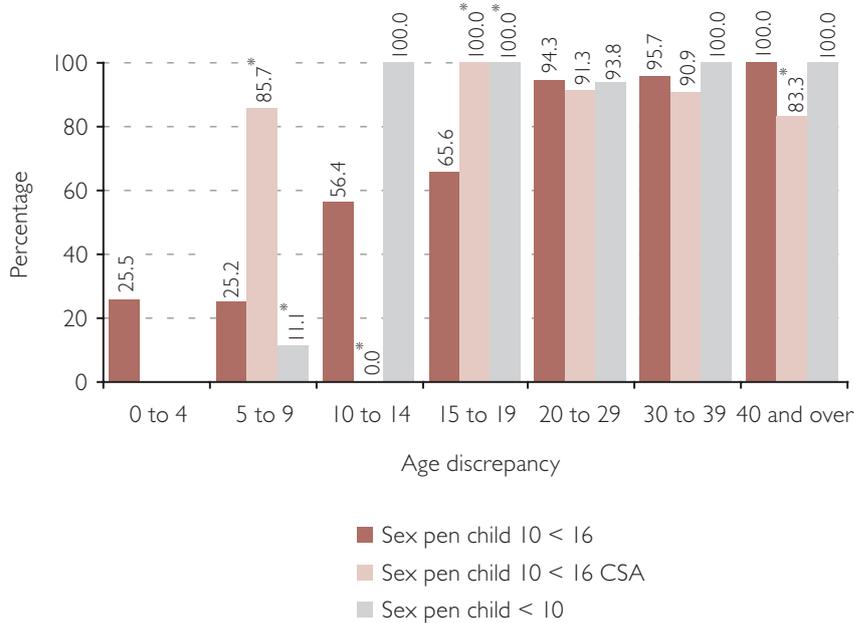
For sexual penetration with a child aged 10 to under 16 who is under the care, supervision or authority of the offender, the most common age difference was between 20 and 29 years (39.7% of charges).

Thus, consistent with the distributions of the age of defendants, age discrepancies tended to be substantially greater for charges of sexual penetration with a child aged under 10, and to a lesser extent sexual penetration with a child aged 10 to 16 under the care, supervision or authority of the offender than for sexual penetration with a child aged 10 to 16.

Imprisonment sentences

Figure 14 shows the percentage of charges that received imprisonment according to age discrepancy and offence category.

Figure 14: Percentage of charges that received imprisonment by age difference between defendant and victim and by offence, 2006–07 to 2007–08



*Fewer than 10 charges

The percentage of charges of sexual penetration with a child aged 10 to under 16 that received imprisonment increased from 25.2 per cent where the age difference was 5 to 9 years to 100.0 per cent where the age difference was 40 years or over.

For sexual penetration with a child aged 10 to under 16 under the care, supervision or authority of the offender, the percentage of charges that received imprisonment did not vary greatly according to the age difference. It was over 83 per cent for all age difference groups.

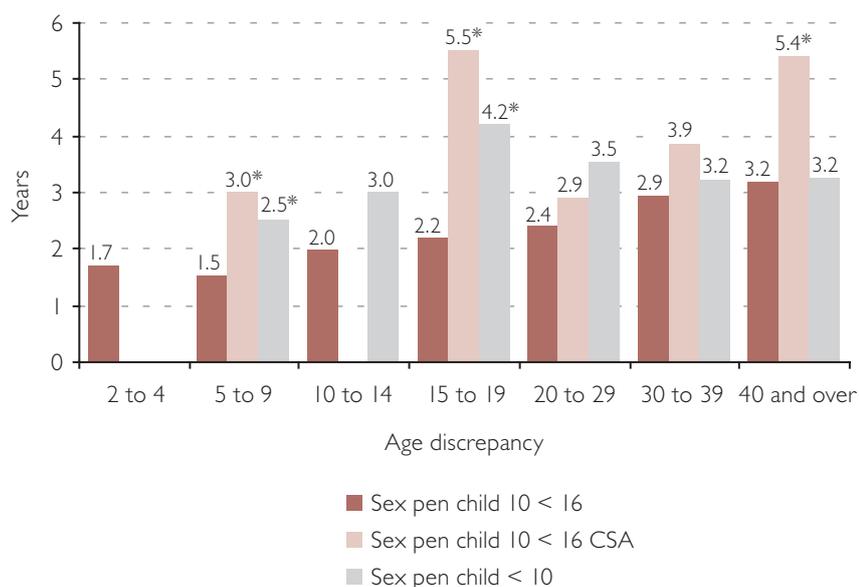
Virtually all charges of sexual penetration with a child aged under 10 received imprisonment where the age difference was 10 years or more.

Where the age difference was 5 to 9 years, only 11.1 per cent of charges received imprisonment. Note that the defendants in these instances would have been at most 19 years of age when the offence was committed.

Imprisonment term

Figure 15 shows the average imprisonment term for charges according to age difference and offence category.

Figure 15: Average imprisonment term (years) for charges by age difference between defendant and victim and by offence, 2006–07 to 2007–08



* Fewer than 10 charges

For sexual penetration with a child aged 10 to under 16, the average imprisonment term increased across each age difference group from 1.5 years for charges where the age difference was 5 to 9 years, to 3.2 years where the age difference was 40 or more years.

For sexual penetration with a child aged under 10, average imprisonment terms increased from 2.5 years where the age difference was 5 to 9 years to 4.2 years where the age difference was 15 to 19 years; they then declined to 3.2 years where the age difference was 30 years and over.

For sexual penetration with a child aged 10 to under 16 under the care, supervision or authority of the offender, average imprisonment terms were longest where the age difference was 15 to 19 years (5.5 years) and shortest where the age difference was 20 to 29 years.

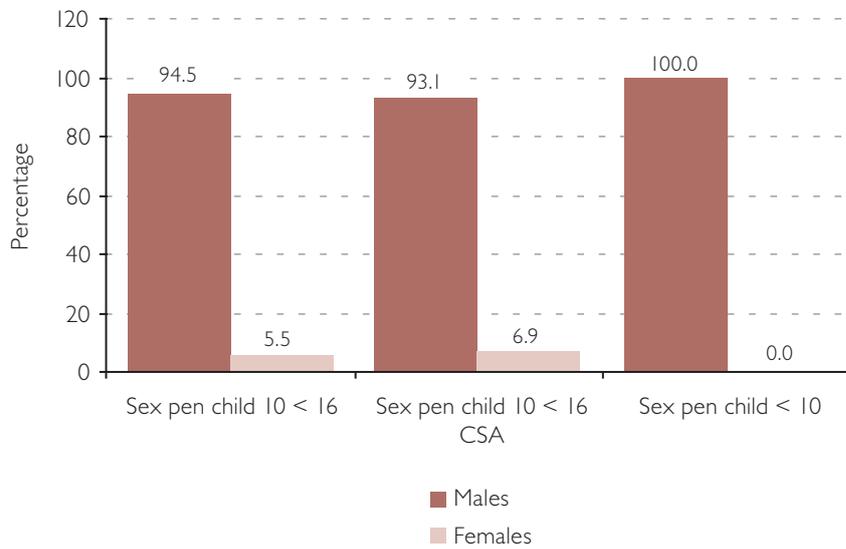
Gender of defendant

This section considers the gender of the defendant and the variation in sentencing according to gender.

Distribution

Figure 16 shows the percentage of charges according to the gender of the defendant.

Figure 16: Percentage of charges by gender of defendant and offence, 2006–07 to 2007–08



A male was the defendant in over 90 per cent of charges for each of the offence categories, with all charges of sexual penetration with a child aged under 10 committed by males.

Across the three offence categories, the highest percentage of female defendants sentenced was for charges of sexual penetration with a child aged 10 to under 16 under the care, supervision or authority of the offender (6.9%).

In terms of sentencing, males were more likely to be sentenced to imprisonment than females and their imprisonment sentences were, on average, marginally longer; however such a comparison is statistically problematic because of the small numbers of females sentenced for these offences.

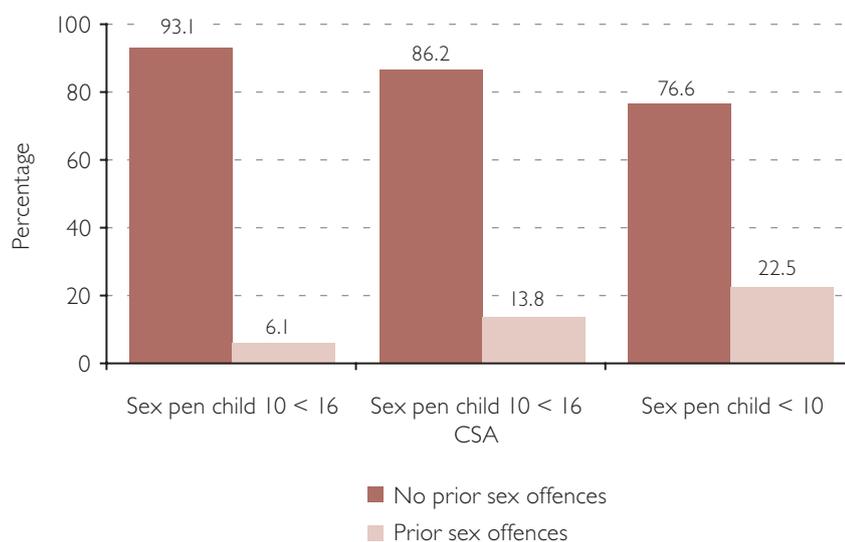
Prior sexual offending

This section examines the prevalence of prior sexual offence convictions for sexual offenders and how sentencing varied according to the presence of prior sexual offences.

Distribution

Figure 17 shows the percentage of charges according to whether prior sexual offences were mentioned by the judge in sentencing.

Figure 17: Percentage of sexual offence charges by prior sexual offences and offence category, 2006–07 to 2007–08



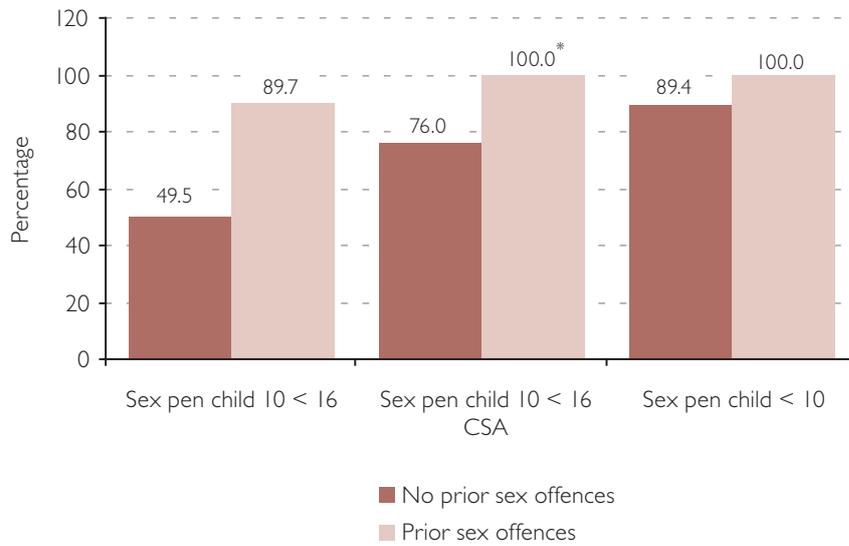
The majority of charges of each sexual offence were against defendants who had no prior sexual offence convictions. The contrast was greatest for sexual penetration with a child aged 10 to under 16, where 93.1 per cent of charges were against defendants with no prior sexual offences. The highest proportion of defendants with a prior sexual offence conviction occurred in cases with charges of sexual penetration with a child aged under 10 (22.5%).

The finding that a small minority of defendants had a known history of sexual offending is consistent with previous research (Gelb, 2007).

Imprisonment sentences

Figure 18 shows the percentage of charges that received imprisonment according to whether or not the defendant had prior sexual offence convictions.

Figure 18: Percentage of sexual offence charges that received imprisonment by prior sexual offences and offence category, 2006–07 to 2007–08



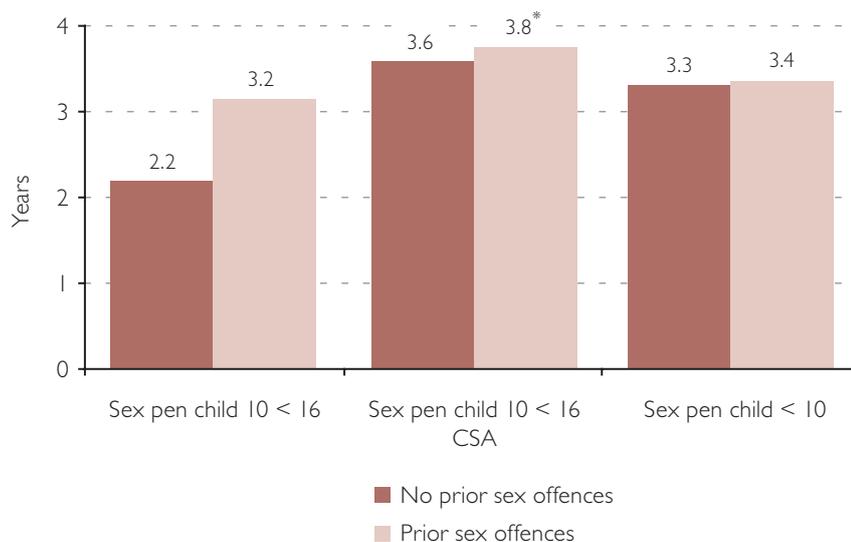
*Fewer than 10 charges

The percentage of charges that received imprisonment was higher for charges against defendants with prior sexual offence convictions. The contrast was greatest for sexual penetration with a child aged 10 to under 16.

Imprisonment term

Figure 19 shows the average imprisonment sentence length for charges according to whether the defendant had prior sexual offences.

Figure 19: Average imprisonment sentence length for sexual offence charges by prior sexual offences and offence category, 2006–07 to 2007–08



*Fewer than 10 charges

For all offences, imprisonment sentences were on average longer for charges against defendants with prior sexual offences; the difference was greatest for sexual penetration with a child aged 10 to under 16 and smallest where the child was under 10.

Although there appears to be a link between prior sexual offending and sentencing outcomes, the small number of charges in which the defendant had prior sexual offence convictions means that these data may be unreliable.

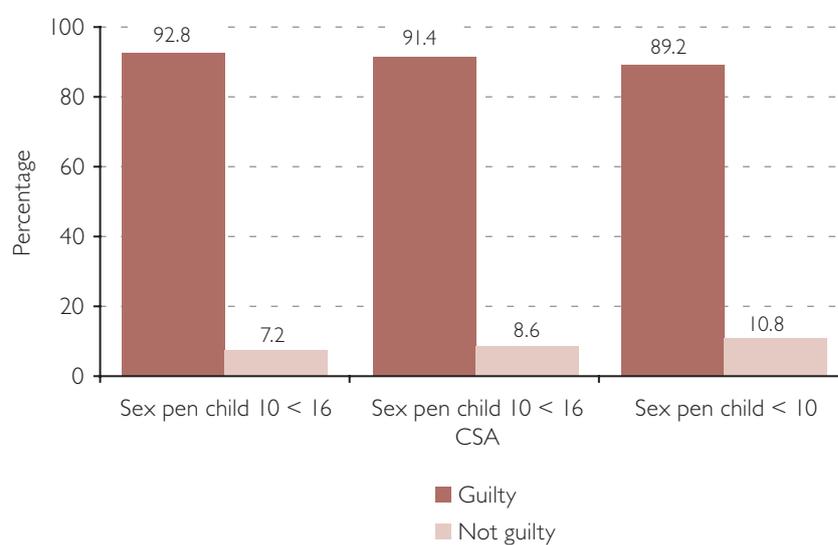
Plea type

This section examines the plea type entered by the defendant for sexual offence charges and the variation in sentencing according to the plea type.

Distribution

Figure 20 shows the percentage of charges in which a guilty or not guilty plea was entered by the defendant.

Figure 20: Percentage of charges by offence and plea type, 2006–07 to 2007–08

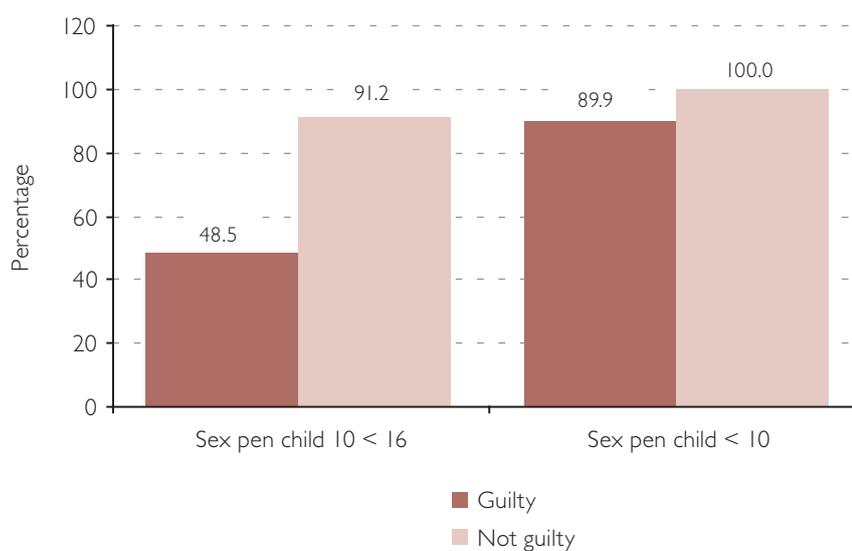


Guilty pleas were entered in approximately 90 per cent of charges for each of the offence categories. Not guilty pleas were slightly more common for sexual penetration with a child aged under 10 (10.8%) than the other offences (less than 9%).

Imprisonment sentences

Figure 21 shows the percentage of charges that received imprisonment according to the plea type.

Figure 21: Percentage of charges sentenced to imprisonment by offence category and plea type, 2006–07 to 2007–08



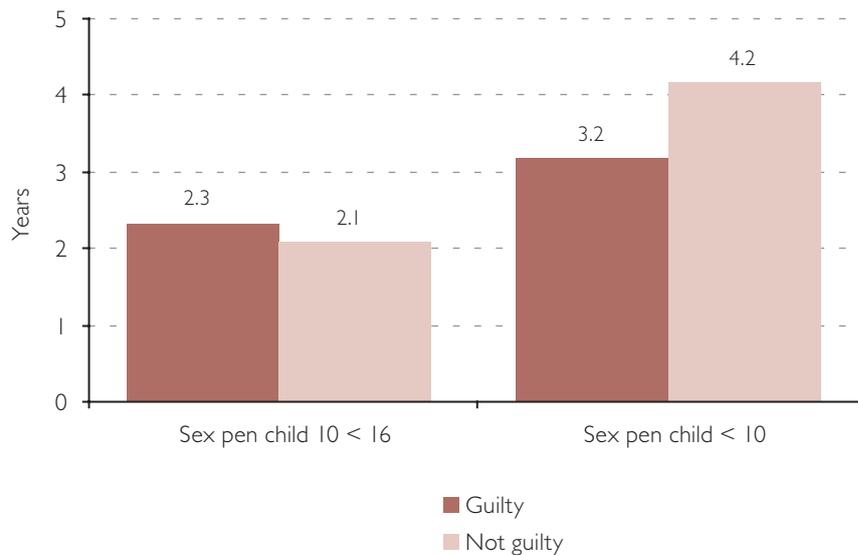
Note: Data for sex pen child 10 < 16 CSA are not presented because of the small numbers of defendants who pleaded not guilty.

The percentage of charges that received imprisonment was higher for charges with not guilty pleas than charges with guilty pleas for both offences. However, for sexual penetration with a child aged 10 to under 16, 91.2 per cent of charges with a not guilty plea received imprisonment as opposed to 48.5 per cent of charges with a guilty plea. The difference was far less for charges of sexual penetration with a child aged under 10 (100.0% for not guilty pleas and 89.9% for guilty pleas).

Imprisonment term

Figure 22 shows the average imprisonment term for charges according to the plea type.

Figure 22: Average imprisonment term for sexual penetration offences by plea type and type of offence, 2006–07 to 2007–08



Note: Data for sex pen child 10 < 16 CSA are not presented because of the very small numbers of defendants who pleaded not guilty.

For charges of sexual penetration with a child aged under 10, the average term of imprisonment was longer for not guilty pleas (4.2 years) than guilty pleas (3.2 years). In contrast, imprisonment sentences for guilty pleas for sexual penetration with a child aged 10 to under 16 (2.3 years) were slightly longer than not guilty pleas (2.1 years). While this result suggests that sentences for this offence were less severe for not guilty pleas, it needs to be considered in the light of Figure 21, which shows that the percentage of charges that received imprisonment for not guilty pleas was nearly double that of guilty pleas.

Although there appears to be a link between plea type and sentencing outcomes, the small number of charges in which the defendant pleaded not guilty means that these data may be unreliable.

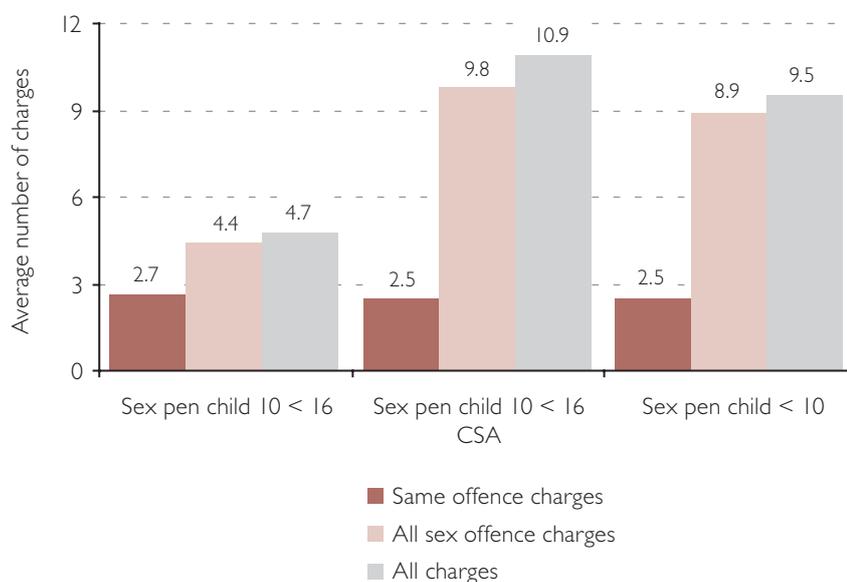
Sentencing of child sexual offence cases

The preceding analysis found a number of key factors contributing to sentence variation at the charge level. Factors that help to explain sentence variation at the case level, over and above these charge-based factors, are likely to be limited to the number and type of other offences in the case. This section examines sentence variation at the case level according to the number and type of offences sentenced in a case.

Number of sexual offences per case

Cases with these sexual penetration offences against children frequently involved a substantial number of other sexual offences. Figure 23 shows the average number of charges sentenced per case by type of charge for cases involving each of the three sexual penetration offences against children.

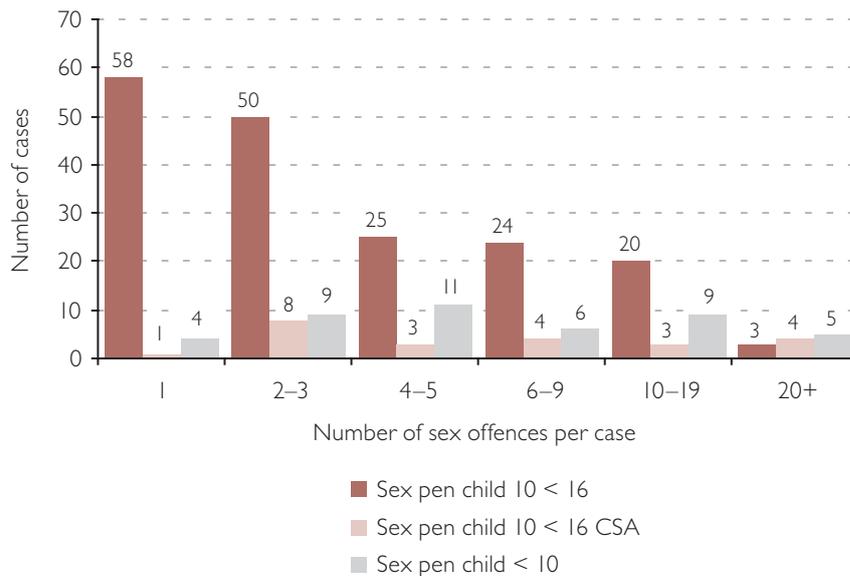
Figure 23: Average number of charges per case by offence and charge type, 2006–07 to 2007–08



Cases with sexual penetration with a child aged 10 to under 16 had on average 2.7 counts of that offence. This was slightly lower, at 2.5, for cases involving sexual penetration with a child aged 10 to under 16 who is under the care, supervision or authority of the offender and for cases of sexual penetration with a child aged under 10. When all sexual offences sentenced in a case were considered, these averages increased dramatically. For cases with sexual penetration with a child aged 10 to under 16 who is under the care, supervision or authority of the offender, the average number of sexual offences sentenced was 9.8, and for cases involving sexual penetration with a child aged under 10 the average was 8.9.

Focussing on sexual offences only, Figure 24 shows the distribution of cases according to the number of sexual offences sentenced within a case.

Figure 24: Number of cases by offence category and number of sexual offences within the case, 2006–07 to 2007–08



Cases of sexual penetration with a child aged 10 to under 16 had the highest percentage of cases where that was the only sexual offence in the case (32.2%), though 20 cases (11.1%) had 10 to 19 charges and three cases had 20 or more sexual offence charges.

In contrast to the distribution of cases with sexual penetration with a child aged 10 to under 16, there was a fairly even distribution according to the number of sexual offence charges for sexual penetration with a child aged 10 to under 16 under the care, supervision or authority of the offender and sexual penetration with a child aged under 10. The vast majority (over 90 per cent) of cases involving these offences had multiple counts of sexual offences.

The types of other sexual offences sentenced within sexual penetration with a child cases are presented in Figure 25, Figure 26 and Figure 27. They show the percentage of cases with each of the sexual penetration with a child offence categories that contained at least one count of specified other sexual offence categories. For instance, 9.4 per cent of sexual penetration with a child aged 10 to under 16 cases also included at least one count of indecent assault.

The sexual offence category sentenced most commonly alongside sexual penetration with a child aged 10 to under 16 was indecent act with a child aged under 16 (29.4 per cent of cases), while less than 4 per cent of cases included some other penetrative sexual offence. Indecent act with a child was also the most common other sexual offence in cases with sexual penetration with a child aged 10 to under 16 under the care, supervision or authority of the offender (69.6%) and sexual penetration with a child aged under 10 (63.6%). Indecent assault was sentenced in 34.1 per cent of cases that included sexual penetration with a child aged under 10.

Figure 25: Percentage of sexual penetration with a child aged 10 to 16 cases (n = 179) according to the category of other sexual offences within the case, 2006–07 to 2007–08

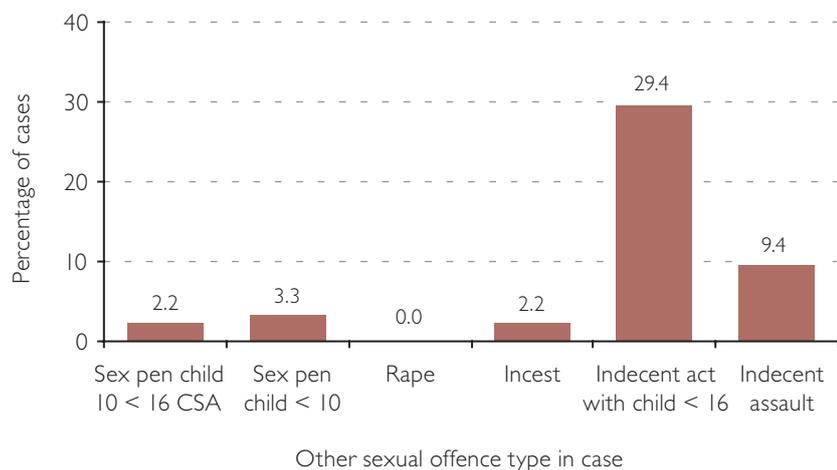


Figure 26: Percentage of sexual penetration with a child aged 10 to 16 CSA cases (n = 23) according to the category of other sexual offences within the case, 2006–07 to 2007–08

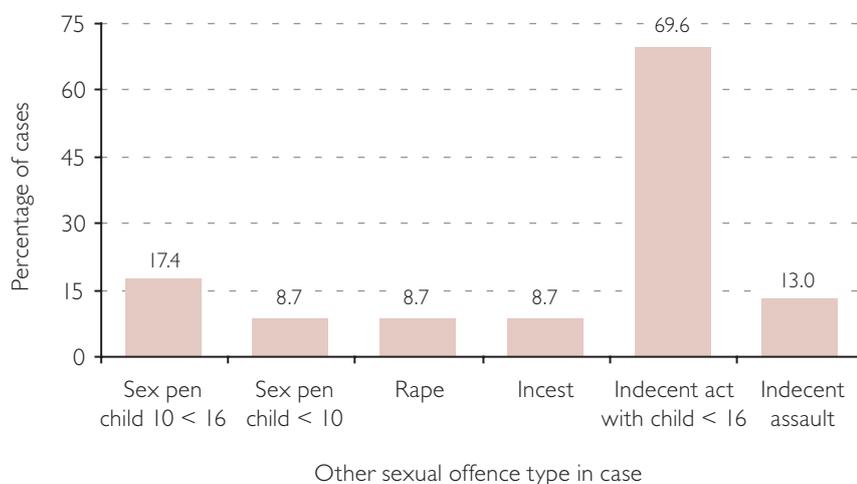
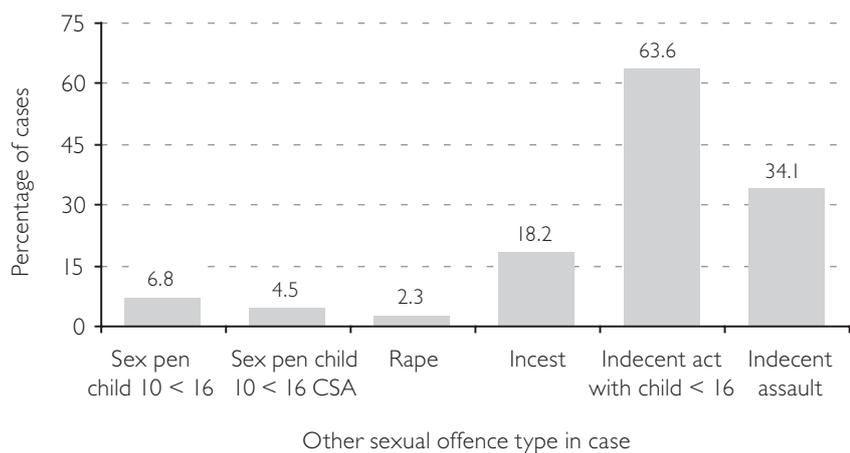


Figure 27: Percentage of sexual penetration with a child aged under 10 cases (n = 44) according to the category of other sexual offences within the case, 2006–07 to 2007–08

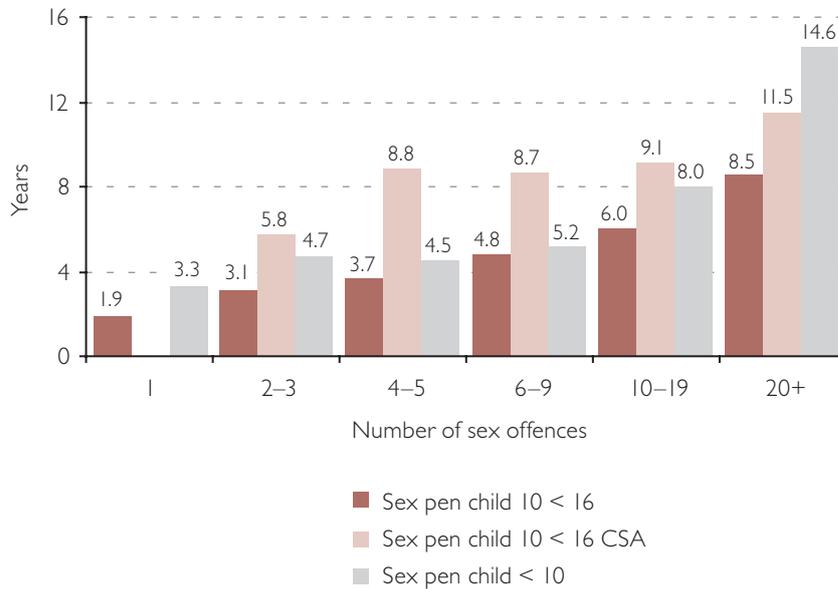


Sentencing outcomes

This final section turns to sentencing outcomes at the case level according to the number of sexual offences sentenced within a case.

Figure 28 shows the average imprisonment term for total effective sentences according to the number of sexual offences sentenced in the case.

Figure 28: Average total effective sentence term of imprisonment for cases by number of sexual offences within the case and offence category 2006–07 to 2007–08



For each sexual offence category, there was an increase in the total effective imprisonment term as the number of sexual offences in the case increased. For example, for cases with sexual penetration with a child aged 10 to under 16 the average imprisonment term was 1.9 years where there was a single sexual offence, 4.8 years where there were 6 to 9 sexual offences and 8.5 years where there was 20 or more sexual offences. The longest average total effective sentence length was 14.6 years – for cases involving sexual penetration with a child aged under 10 that included 20 or more sexual offences.

Summary

This statistical report has examined sentencing outcomes in Victoria for five sexual penetration offences between July 2006 and June 2008.

It found that across all of the offence categories, imprisonment was the most common sentence imposed. Approximately 90 per cent of both charges and cases of rape, incest and sexual penetration with a child aged under 10 received imprisonment. A slightly lower percentage of charges for sexual penetration with a child aged 10 to under 16 under the care, supervision or authority of the offender received imprisonment (82.2%).

The sexual penetration offence category for which sentencing differed markedly from the other offences was sexual penetration with a child aged 10 to under 16. Just over half of the charges of this offence category received imprisonment, and substantial proportions received wholly suspended sentences (18.0%) and community-based orders (15.5%). This offence was also substantially more common than the other offence categories examined.

In terms of the length of imprisonment sentences imposed, there was substantial variation at the charge level in the average across these offence categories. Charges of rape had the longest average term of imprisonment at 4.7 years. The average length for charges of sexual penetration with a child aged under 10 was 3.3 years, lower than that for rape and sexual penetration with a child aged 10 to under 16 under the care, supervision or authority of the offender (3.6 years). Average terms of imprisonment were shortest for charges of sexual penetration with a child aged 10 to under 16 (2.3 years).

Average total effective imprisonment sentences at the case level were found to be substantially longer than average imprisonment terms at the charge level across all offence categories. For example, the average total effective imprisonment term at the case level for sexual penetration with a child aged under 10 was 6.7 years, more than double the average imprisonment term for individual charges of this offence (3.3 years).

The reason for such discrepancies is the influence of multiple charges within a case. The sexual offence cases examined here were found to frequently have large numbers of charges. For example, the average number of sexual offence charges in cases with at least one sexual penetration with a child aged under 10 was 8.9.

In sentencing, while each proven charge within a case receives a separate sentence, the case as a whole also receives a sentence (the total effective sentence). Where a case has multiple charges, the total effective sentence for the case will generally be some aggregation of sentences attached to its charges. The method of aggregation often involves a mixture of concurrency and cumulation of individual sentences. It relies on the discretion of sentencers and is underpinned by the principle of totality and other considerations, stated in the *Victorian Sentencing Manual*.

The longest average total effective imprisonment term was for cases that included sexual penetration with a child aged 10 to under 16 under the care, supervision or authority of the offender (8.8 years), followed by rape cases (7.6 years) and cases of sexual penetration with a child aged under 10 (6.7 years). It was shortest for sexual penetration with a child aged 10 to under 16 cases (4.2 years).

While sentencing practices varied across the five offence categories, the detailed examination of the three categories of sexual penetration with a child aged under 16 found substantial variation in sentencing within these categories according to certain factors. Most notably the age of the victim appeared to have a clear effect on sentence outcomes. In terms of the percentage of charges that received imprisonment, for each category of offence this declined as the victim's age increased, and sentence length showed a similar trend, but only where the sexual offence did not involve a child under the care, supervision or authority of the offender.

The defendant's age at the time of the offence and the discrepancy between the age of the victim and the defendant were also relevant; generally, as the defendant's age and the age discrepancy increased, the severity of sentencing increased. Other factors examined, including the gender of the defendant, plea type entered, and presence of prior sexual offence convictions also appeared to have an effect on sentencing outcomes; however, because of large discrepancies in sample sizes for each of these variables, such conclusions remain tentative.

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